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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL E. FORD and ERIC HUBBARD

Appeal 2008-2916
Application 09/779,390[1]
Technology Center 2400

Decided: [2] April 24, 2009

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, C., *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] Application filed February 7, 2001. The real party in interest is Hewlett-Packard Development Company, LP.

[2] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date.

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-21 mailed February 6, 2007, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

Appellants invented a system and method for accessing software components, interfaces, or resources in a distributed network environment. The system and method locate such components, interfaces, or resources based upon certain specified attributes, and without having prior knowledge of the address or location of the component, interface, or resource. (Spec., Abstract.)

B. ILLUSTRATIVE CLAIM

The appeal contains claims 1-21. Claims 1, 12, 20, and 21 are independent claims. Claims 1 and 4 are illustrative:

> 1. In a distributed computer network having at least one service consumer and at least one service provider, a method for locating a remote software component by a service consumer comprising:
>
> generating a request for identification of a component having at least one specified attribute that describes a service performed by the component;
>
> broadcasting the request across the network;

receiving the request at a service provider;

comparing the at least one specified attribute of the received request with component attributes of the service provider to identify a matching component; and

communicating a response by the service provider to the requesting service consumer, wherein the response indicates a location of the requested component associated with the service provider.

4. The method as defined in claim 1, wherein the step of broadcasting the request utilizes a multicast protocol for broadcasting the request across the network.

C. REFERENCES

The references relied upon by the Examiner in rejecting the claims on appeal are as follows:

Baratz	US 4,914,571	Apr. 3, 1990
Chandra	US 6,889,254 B1	May 3, 2005
		(Filed Mar. 30, 1999)

D. REJECTIONS

The Examiner entered the following rejections which are before us for review:

(1) Claims 1-10, 12-15, and 17-21 are rejected under 35 U.S.C. § 102(b) as being anticipated by Baratz; and

(2) Claims 11 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Baratz in view of Chandra.

II. PROSECUTION HISTORY

Appellants appealed from the Final Rejection and filed an Appeal Brief (App. Br.) on June 5, 2007. The Examiner mailed an Examiner's Answer (Ans.) on July 26, 2007. Appellants filed a Reply Brief (Reply Br.) on September 26, 2007.

III. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Specification

1. The Specification discloses that "a service descriptor is essentially a hash table that includes name/value pairs that may be used to specify various attributes. In the illustrated service descriptor, items like service name, server host, server name, OS name, and OS version may be included in the service descriptor 230" (15:17-20).

2. The Specification discloses that "connectionless protocols, such as UDP over an IP network, have been developed. Connectionless protocol typically rely on a broadcast or 'multicast' model where a single message is broadcast to a [sic] multiple receiving devices without forming a connection with the individual systems" (14:17-20).

Baratz

3. Baratz discloses that "[a] LOCATE search dynamically locates resources (e.g., logical units (LUs) and transaction program and files associated with LUs) in a computer network so that a session can be established between the origin and the destination of the search" (Abstract).

4. Baratz discloses that "wherein said message [a search request message] contains a second variable which describes the type and name of the resource being sought" (claim 9).

5. In Baratz, "FIND RESOURCE and FOUND RESOURCE GDS Variables contain information used in the directories: data about origin resources that should be cached by the destination and resource type and name being requested (referred to as the 'Search Argument')" (col. 12, ll. 19-24).

6. Baratz discloses that "[a] decision is made as to whether a CP name matched the resource name in decision block 68. If there is a match, a directed search is sent to the destination CP containing the resource as shown in block 70" (col. 19, ll. 56-60).

IV. PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005), citing *Minn.*

Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565 (Fed. Cir. 1992). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) ("In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.") (internal citations omitted).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants' Brief to show error in the proffered prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief has not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

V. ANALYSIS

Grouping of Claims

In the Brief, for claims 1-3 and 5-21, Appellants repeat the same argument made for claim 1 (App. Br. 8-10). We will, therefore, treat claims 2, 3, and 5-21 as standing or falling with claim 1.

Appellants separately argue claim 4 (App. Br. 11).

See 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young,* 927 F.2d 588, 590 (Fed. Cir. 1991).

The Anticipation Rejection

Claims 1-3, 5-10, 12-15, and 17-21

We first consider the Examiner's rejection of claims 1-3, 5-10, 12-15, and 17-21 under 35 U.S.C. § 102(b) as being anticipated by Baratz.

Appellants contend that "[n]owhere does Baratz teach that the broadcast includes an attribute that 'describes a service performed by the component.' Instead, the broadcast in Baratz includes bits that identify a resource type and resource name. A service performed by the resource is not identified in the broadcast" (App. Br. 8; *see* also Reply Br. 2). Appellants further contend that "[a] significant difference exists between sending a request that describes a service (i.e., claim 1) and sending a request that includes a resource name (i.e., Baratz)" (App. Br. 9).

The Examiner found that Baratz discloses a LOCATE message for identification of a component having at least one specified attribute (Ans. 4).

Issue: Have Appellants shown that the Examiner erred in finding that Baratz discloses generating a request for identification of a component having at least one specified attribute that describes a service performed by the component?

In essence, Appellants contend that Baratz's LOCATE message which admittedly contains a resource type and a resource name is distinguishable from the claimed *"attribute that describes a service performed by the component."* We disagree.

For starters, we find that Appellants have not shown how a "name" in and of itself is incapable of describing *a service performed*. While we agree that there are some "names" that are not very descriptive, there are, however, names like "printer 1", for example, that certainly describes a service performed, e.g., printing.

Furthermore, we note that in Appellants' Specification a "service performed" is only identified by a "service descriptor" which interestingly includes items like the service "name" (FF 1). In other words, while Appellants contend that a "name of a resource" is distinguishable from the "services performed" by the resource, Appellants' own Specification has identified service items as including the "name" of the resource.

In addition, Baratz's LOCATE message admittedly also contains information about a "type." The term "type" signifies an association with a particular kind, class, or group. *Merriam-Webster's Collegiate Dictionary,* p.1278 (10th Edition 1997). We find that knowing the particular kind, class,

or group of an item can reasonably lead one to know the service performed by that item.

Thus, we find that the LOCATE message in Baratz which includes the "type" and "name" of the resource being sought is consistent with Appellants' "service descriptors" described at page 15, lines 17-20 of the Specification.

Given that Baratz discloses using a search request message that includes the name (i.e., service performed) of the resource sought (FF 3-5), we find that the claimed *"attribute that describes a service performed by the component"* reads on Baratz's Search Argument that includes the name and type of the resource being sought.

Appellants further contend that the disclosed "byte 4, bit 0 in Baratz is an indicator that indicates when the service procedure is complete. This indicator is not compared with other attributes of a service provider to identify a matching component. No comparison is made with this indicator in Baratz" (App. Br. 10).

The Examiner found that "in order for a resource to be located from the broadcast search, each provider must compare with the request to see if it is able to support the request" (Ans. 4).

Issue: Have Appellants shown that the Examiner erred in finding that Baratz discloses *comparing the at least one specified attributes of the received request with component attributes of the service provider to identify a matching component*?

Consistent with the Examiner's findings, we also find that Baratz discloses search techniques that look for matches, particularly between CP (control points) names at the service providers and sought after resource names (FF 6). As such, while Baratz's particular byte 4, bit 0 may not be compared with other attributes, Baratz does compare resource names (a requested attribute) with CP names (a service provider attribute) in order to direct the search to the appropriate destination containing the resource. Thus, we find that Baratz does indeed disclose matching components, as set forth in claim 1.

As to the other recited elements of claim 1, Appellants provide no argument to dispute that the Examiner has correctly shown where all these claimed elements appear in the prior art. Thus, we deem those arguments waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

We find that the Examiner has set forth a sufficient initial showing of anticipation, and we find that Appellants have *not* shown error in the Examiner's rejection of illustrative claim 1. Therefore, we affirm the rejection of independent claim 1 and of claims 2, 3, 5-10, 12-15, and 17-21, which fall therewith.

Claim 4

Appellants contend that "Baratz states that 'a broadcast as described above is sent to all servers in the network . . .' Baratz never states that the

broadcast is multicast. Many different ways exist for broadcasting messages to all servers" (App. Br. 11).

The Examiner found that "broadcasting to all servers corresponds to [a] multicast protocol" (Ans. 5).

Issue: Have Appellants shown that the Examiner erred in finding that broadcasting to all servers corresponds to a multicast protocol for broadcasting?

"Our analysis begins with construing the claim limitations at issue." *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at *2 (BPAI 2007). Here, we must construe the claim limitation "a multicast protocol." Claims are given their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). In the Specification, Appellants refer to an "UDP connectionless protocol" and how this protocol relies on a multicast model (FF 2). However, Appellants have also admitted that other multicast messaging protocols have been developed (App. Br. 11). Thus, we find that although the UDP connectionless protocol may be Appellants' preferred method of broadcasting (Spec., 15:7-9), the claimed invention is not limited to such a connectionless protocol. Instead, claim 4, as shown *supra,* merely requires that the request utilizes "a multicast protocol" for broadcasting, not necessarily the UDP protocol. The Examiner found that Baratz's broadcast to all servers is the same as a multicast protocol given that a "multicast" is

the ability of one network node to send identical data to a number of end nodes (Ans. 10). We agree. "Without evidence in the patent specification of an express intent to impart a novel meaning to a claim term, the term takes on its ordinary meaning." *Optical Disc Corp. v. Del Mar Avionics*, 208 F.3d 1324, 1334 (Fed. Cir. 2000). Here, we adopt the Examiner's ordinary meaning of "multicast protocol" as allowing a node to send identical data to a number of end nodes.

Thus, we find that the Examiner has set forth a sufficient initial showing of anticipation, and we find that Appellants have *not* shown error in the Examiner's rejection of illustrative claim 4. Therefore, we affirm the rejection of claim 4.

The Obviousness Rejection

Claims 11 and 16

We now consider the Examiner's rejection of claims 11 and 16 under 35 U.S.C. § 103(a) as being obvious over the combination of Baratz and Chandra.

Appellants merely contend that "Baratz does not teach or suggest all elements of the independent claims. Chandra fails to cure these deficiencies" (App. Br. 11). Given that we have found no such deficiencies in Baratz, we find this argument unpersuasive.

Thus, we find that the Examiner has set forth a sufficient initial showing of obviousness, and we find that Appellants have *not* shown error

in the Examiner's rejection of claims 11 and 16. Therefore, we affirm the rejection of claims 11 and 16.

VI. CONCLUSIONS

We conclude that Appellants have *not* shown that the Examiner erred in rejecting claims 1-21.

Thus, claims 1-21 are not patentable.

VII. DECISION

In view of the foregoing discussion, we affirm the Examiner's rejection of claims 1-21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2008).

AFFIRMED

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